

# **Families First Coronavirus Response Act: Frequently Asked Questions (FAQs)**

The paid leave that has been provided by federal law expired December 31, 2020. Current federal law allows, but does not require, employers to extend paid sick leave and emergency family and medical paid leave. Effective March 30, 2021, paid sick leave and emergency family and medical paid leave is extended to employees to use through September 30, 2021.

You may continue to use the FFCRA COVID-19 leave provided by the federal law if you have not already exhausted the leave originally provided. The 80-hours of state-provided COVID-19 sick leave is no longer available to those who did not use it as the emergency declaration has been ended. No additional paid leave will be offered if you have used all available COVID paid leave.

The State Human Resources Division created this FAQ, based on the U.S. Department of Labor model, to assist executive branch human resources (HR) staffs, agency managers, and employees with following the leave provisions of the **Paid Sick Leave (PSL)** and the **Expanded Family and Medical Leave Act (E-FMLA)** found in the Families First Coronavirus Response Act Policy (FFCRA Policy). The FFCRA Policy's paid leave provisions are effective on April 1, 2020, and apply to leave taken between April 1, 2020, through September 30, 2021.

## **This FAQ is subject to change as new guidance be developed.**

### **Publication and revision history:**

**Original publish date: April 10, 2020**

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## **Definitions**

- **Paid Sick Leave (PSL)** provides an eligible full-time employee with up to 80 hours of paid leave **if the employee is unable to work or telework** because the employee is:
  - (1) subject to a federal, state, or local quarantine or an isolation order related to COVID-19;
  - (2) advised by a health care provider to self-quarantine or isolate related to COVID-19;
  - (3) experiencing COVID-19 symptoms and is seeking a medical diagnosis;
  - (4) directly caring for an individual who is unable to care for him- or herself and is required or advised by a healthcare provider to self-quarantine or self-isolate for reasons related to COVID-19;
  - (5) caring for a child (under 18 years of age) whose school or childcare provider is closed or unavailable for reasons related to COVID-19; or
  - (6) experiencing any other substantially similar condition specified by the federal Secretary of Health and Human Services, in consultation with the Secretaries of Labor and Treasury.

NOTE: This 80 hours of PSL does not include the original 80 hours of COVID-19 sick leave made available prior to April 1, 2020. A full-time employee is only eligible to use the 80 hours of PSL and 12 weeks of Emergency Family and Medical Leave if it has not yet been exhausted.

- **Expanded Family and Medical Leave (E-FMLA)** provides an eligible employee who is unable to work or telework due to a bona fide need for leave to care for the employee's child (under 18 years of age) whose school or childcare provider is closed or unavailable for reasons related to COVID-19.

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- **Child:** Under the FFCRA, a “child” is your own child, which includes your biological, adopted, or foster child; your stepchild; a legal ward; or a child for whom you are standing in loco parentis—someone with day-to-day responsibilities to care for or financially support a child.

Under the FFCRA a “child” is also your child who is 18 years of age or older who has a mental or physical disability and is incapable of self-care because of that disability.

## **Questions and Answers**

### **1. Under the FFCRA Policy, what leaves are available to me if I am unable to work or telework?**

Effective April 1, 2020, the federal Families First Coronavirus Response Act added additional paid and unpaid leave categories that apply to state employees. Below is a summary of the available leave categories related to the COVID-19 pandemic.

- FFCRA Paid Sick Leave (PSL): up to 80 hours of paid sick leave is available when an employee meets eligibility criteria.
- FFCRA E-FMLA: up to a total of 12 weeks of FMLA leave. The first two weeks of E-FMLA leave are unpaid, and the remaining 10 weeks of E-FMLA leave are paid. (Note: An eligible employee may be able to use PSL to receive pay for the first two weeks of unpaid E-FMLA.)
- Any other available accrued leave: sick, annual, and compensatory time.

### **2. How much will an employee get paid while taking PSL?**

Employees will be paid 100 percent of their regular rate of pay when taking PSL.

### **3. How much will I get paid on E-FMLA?**

An employee is eligible to receive up to 12 weeks of E-FMLA, which includes any regular FMLA leave taken during the 12-month FMLA-leave window. The first two weeks (10 days) of E-FMLA are unpaid. However, an employee may take PSL for the first ten days (up to 80 hours) if eligible or can substitute any other accrued annual leave, sick leave, or compensatory time.

The remaining ten weeks of E-FMLA are paid at 100 percent of the employee’s regular rate of pay for the hours the employee would normally be scheduled to work.

### **4. If I take PSL, does that count against other types of sick leave to which I am entitled?**

No, PSL is in addition to other leave provided under federal, state, or local law; an applicable collective bargaining agreement; or the state’s existing policy.

### **5. Can employees be required to use other types of accrued paid leave before PSL?**

No, PSL is available for immediate use.

### **6. What is a full-time employee and part-time employee for purposes of the FFCRA Policy?**

A full-time employee is one who normally is scheduled to work 40 or more hours per week.

An employee who is not “full-time” is part-time, and that employee receives PSL or E-FMLA hours equivalent to the number of hours the employee works on average over a two-week period.

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**7. As a manager, how do I count hours worked by a part-time employee for purposes of PSL or E-FMLA?**

A part-time employee receives leave based on the average number of work hours in a two-week period. You calculate hours of leave based on the number of hours the employee is normally scheduled to work.

If the normal hours scheduled are unknown or if the part-time employee's schedule varies, you may use a six-month average to calculate the average daily hours. Such a part-time employee may take PSL for this average number of hours per day for up to a two-week period and may take expanded family and medical leave for the same average number of hours per day for up to ten weeks after the initial two-week period.

If you cannot determine this calculation because the employee has not been employed for at least six months, use the number of hours that you and your employee agreed that the employee would work upon hiring. If no such agreement exists, you may calculate the appropriate number of hours of leave based on the average hours per day the employee was scheduled to work over the entire term of his or her employment.

**8. May I take 80 hours of PSL for my self-quarantine and then another amount of PSL for another reason provided under the FFCRA?**

No. You may take up to maximum of 80 hours (two weeks or ten working days) PSL for a full-time employee. For a part-time employee, the prorated maximum hours equal the average number of hours that the employee works over a typical two-week period.

**9. How does the E-FMLA interact with other leave taken under FMLA in a 12-month period?**

E-FMLA does not change the overall amount of FMLA leave employees can take during an applicable FMLA 12-month period. During a single FMLA 12-month period, an employee can use a combination of FMLA and E-FMLA leave up to a combined maximum of 12 weeks. However, E-FMLA expires on September 30, 2021.

For example, if during an applicable FMLA 12-month period an employee takes 12 weeks of FMLA leave, E-FMLA is unavailable, because the employee has exhausted the full 12 weeks of FMLA leave for that 12-month period. An employee who has exhausted FMLA may use PSL for childcare leave if eligible and if the employee has not already used available PSL.

**10. If I am home with my child because his or her school or place of care is closed or childcare provider is unavailable for reasons related to COVID-19, do I get PSL, E-FMLA, or both? How do they interact?**

You may be eligible for both types of leave, but only for a total of up to twelve weeks of E-FMLA. The PSL or other accrued paid leave may be used during the first ten workdays of E-FMLA, which are otherwise unpaid. After the first ten workdays have elapsed, you will receive up to ten weeks of paid leave at your regular rate of pay for the hours you would have been scheduled to work.

Please note that you can only receive the additional ten weeks of E-FMLA for leave to care for your child whose school or place of care is closed or childcare provider is unavailable due to COVID-19 related reasons. You are eligible for up to a combined total of 12 weeks of regular FMLA leave and E-FMLA leave in an applicable 12-month FMLA period. If you have exhausted your combined total of FMLA and E-FMLA leave and are home with your child for reasons related to COVID-19, you may use any remaining PSL, annual or compensatory leave, or leave without pay. You may only use sick leave

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if a qualifying reason under the sick leave policy, such as an order to quarantine, applies.

You are entitled to PSL under the Emergency Paid Sick Leave Act regardless of how much leave you have taken under the FMLA. PSL is not FMLA leave.

You may use available PSL, annual, or compensatory time concurrently during the first two weeks of E-FMLA leave, which is unpaid, to remain in a paid status.

## **11. Is all leave under the FMLA now paid leave?**

No. The only type of family and medical leave that is paid leave is expanded family and medical leave under the E-FMLA when such leave exceeds ten days. This E-FMLA only includes leave taken because the employee must care for a child whose school or place of care is closed or childcare provider is unavailable due to COVID-19-related reasons.

## **12. Are the PSL and E-FMLA requirements retroactive?**

No.

## **13. What does it mean to be unable to work, including telework, for COVID-19-related reasons?**

If your manager has work for you but you are unable to work because of a COVID-19 qualifying reason in the FFCRA Policy, either under normal circumstances at your normal worksite or by means of telework, then you may qualify for the available FFCRA PSL or E-FMLA leave options.

If you and your manager agree that you will work your normal number of hours, including working outside of your normally scheduled hours (for instance early in the morning or late at night), then you are able to work and leave is not necessary unless a COVID-19 qualifying reason prevents you from working your entire regularly scheduled hours.

If your manager allows you to telework but you are unable to work your regular hours because of one of the COVID-19 qualifying reasons for PSL, then you are entitled to take PSL.

If you are unable to perform your work, including unable to telework, because you need to care for your child whose school or place of care is closed or childcare provider is unavailable because of COVID-19-related reasons, you are eligible for E-FMLA. For any time you are able to telework while caring for your child, PSL and E-FMLA is not available.

## **14. May I take PSL or E-FMLA intermittently while teleworking (and not working at my usual worksite)?**

Yes, if your manager allows it and you are unable to telework your normal schedule of hours due to one of the qualifying reasons for PSL, you may take PSL intermittently while teleworking. If you are prevented from teleworking your normal schedule of hours because you need to care for your child whose school or place of care is closed or childcare provider is unavailable because of COVID-19-related reasons, you and your employer may agree that you can take E-FMLA intermittently while teleworking.

You may take intermittent leave in 30-minute increments, provided you and your employer agree. Agencies are encouraged to collaborate with employees to achieve flexibility and meet mutual needs.

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## **15. May I take my PSL intermittently while working at my usual worksite (as opposed to teleworking)?**

It depends on why you are taking PSL and whether your manager agrees. If you are working at your usual worksite, you must take PSL for qualifying reasons related to COVID-19 in full- day increments. You cannot take PSL intermittently if you are taking leave because:

- You are subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
- You have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- You are experiencing symptoms of COVID-19 and seeking a medical diagnosis;
- You are caring for an individual who either is subject to a quarantine or isolation order related to COVID-19 or has been advised by a health care provider to self-quarantine due to concerns related to COVID-19; or
- You are experiencing any other substantially similar condition specified by the Secretary of Health and Human Services.

Unless you are teleworking, once you begin taking PSL for one or more of these qualifying reasons, you must continue to take PSL each day until you:

- use the full amount of PSL, or
- no longer have a qualifying reason for taking PSL.

This limit is imposed because if you are sick or possibly sick with COVID-19 or caring for an individual who is sick or possibly sick with COVID-19, the intent of the Families First Coronavirus Response Act is to provide such PSL as necessary to keep you from spreading the virus.

If you no longer have a qualifying reason for taking PSL before you exhaust your PSL, you may take any remaining PSL until September 30, 2021, if another qualifying reason occurs.

In contrast, if you and your manager agree, you may take PSL intermittently if you take PSL to care for your child whose school or place of care is closed or whose childcare provider is unavailable because of COVID-19 related reasons. For example, if your child is at home because his or her school or place of care is closed or the childcare provider is unavailable because of COVID-19 related reasons, you may take PSL on Mondays, Wednesdays, and Fridays to care for your child and work at your normal worksite on Tuesdays and Thursdays.

If your child's school, place of care, or child care provider were closed or unavailable on only Monday, Wednesday, and Friday, as opposed to the entire week, then you would not need to take intermittent leave if working on the schedule in the example above. Each day of closure or unavailability is a separate reason for leave, and thus you would not need to take leave for a single reason intermittently. As such, you would not need your manager's permission to take leave on just the days of closure or unavailability. However, you would still need to provide your manager with notice and documentation as soon as practicable.

Agencies are encouraged to collaborate with employees to achieve flexibility and meet mutual needs.

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For example, employers and employees may agree to intermittent leave for less than a full workday for employees taking PSL to care for their child whose school or place of care is closed or childcare provider is unavailable because of COVID-19-related reasons.

**16. May I take E-FMLA intermittently while my child's school or place of care is closed or childcare provider is unavailable due to COVID-19-related reasons if I am not teleworking?**

Yes, but only with your employer's permission. Intermittent E-FMLA should be permitted only when you and your employer agree upon such a schedule. For example, if your employer and you agree, you may take E-FMLA on Mondays, Wednesdays, and Fridays and work Tuesdays and Thursdays while your child is at home because your child's school or place of care is closed or childcare provider is unavailable due to COVID-19-related reasons for the duration of your leave.

If your child's school, place of care, or child care provider were closed or unavailable on only Monday, Wednesday, and Friday, as opposed to the entire week, then you would not need to take intermittent leave if working on the schedule in the example above. Each day of closure or unavailability is a separate reason for leave, and thus you would not need to take leave for a single reason intermittently. As such, you would not need your manager's permission to take leave on just the days of closure or unavailability. However, you would still need to provide your manager with notice and documentation as soon as practicable.

Agencies are encouraged to collaborate with employees to achieve flexibility and meet mutual needs. For example, employers and employees may agree to intermittent leave on a day-by-day basis.

**17. My child's school is operating on an alternate day (or other hybrid-attendance) basis. The school is open each day, but students alternate between days attending school in person and days participating in remote learning. They are permitted to attend school only on their allotted in-person attendance days. May I take paid leave under the FFCRA in these circumstances?**

Yes, you are eligible to take paid leave under the FFCRA on days when your child is not permitted to attend school in person and must instead engage in remote learning, as long as you need the leave to actually care for your child during that time and only if no other suitable person is available to do so. For purposes of the FFCRA and its implementing regulations, the school is effectively "closed" to your child on days that he or she cannot attend in person. You may take paid leave under the FFCRA on each of your child's remote-learning days.

**18. My child's school is giving me a choice between having my child attend in person or participate in a remote learning program for the fall. I signed up for the remote learning alternative because, for example, I worry that my child might contract COVID-19 and bring it home to the family. Since my child will be at home, may I take paid leave under the FFCRA in these circumstances?**

No, you are not eligible to take paid leave under the FFCRA because your child's school is not "closed" due to COVID-19 related reasons; it is open for your child to attend. FFCRA leave is not available to take care of a child whose school is open for in-person attendance. If your child is home not because his or her school is closed, but because you have chosen for the child to remain home, you are not entitled to FFCRA paid leave. However, if, because of COVID-19, your child is under a quarantine order or has been advised by a health care provider to self-isolate or self-quarantine, you may be eligible to take paid leave to care for him or her.

If your child's school is operating on an alternate day (or other hybrid-attendance) basis as explained in #17 above, you may be eligible to take paid leave under the FFCRA on each of your child's remote-

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learning days because the school is effectively “closed” to your child on those days.

19. **My child’s school is open for in-person learning but has informed me that my child may not come to school because my child was potentially exposed to COVID-19. May I take paid leave under the FFCRA while my child is excluded from in-person learning at school?**

Yes, you are eligible to take paid leave under the FFCRA while your child is excluded from in- person learning at school because the school is effectively “closed” to your child during this time period. As with other reasons for FFCRA leave, you must also be unable work or telework because you need to care for your child, and you must be the only person available to provide care.